



9-28-04

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Attorney's Docket No. 5051-574CT

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Martin et al.

Serial No.: 10/802,644

Filed: June 26, 2002

For: BLOCKING PEPTIDE FOR INFLAMMATORY CELL SECRETION

Group Art Unit: 1644

Examiner: Haddad

Confirmation No.: 3963

September 27, 2004

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to the Office Action dated August 25, 2004, it is requested that this application be reconsidered in view of the following remarks.

The Office Action has restricted the claims into six groupings, and requested restriction to one group of claims. Applicants elect the claims of Group I (Claims 1-4, 8-16, 20-27, 31-34, 37-42 and 48-51) with traverse.

The Applicants respectfully submit that it would not be a burden to search and examine the claims of Groups I-VI concurrently. In particular, it would not be burdensome to examine the claims of Groups I-V concurrently, which all recite methods of administering a composition comprising a MANS peptide or active fragment thereof and which are in the same class and subclass. In paragraph 4 (on page 3 of the Office Action), the Examiner states:

These inventions are distinct for the reasons given above. In addition, they have acquired a separate status in the art as shown by different classification and/or recognized divergent subject matter. Further, even though in some cases, the classification is shared, a different field of search would be required based upon the structurally distinct products recited and the various methods of use comprising distinct method steps.

Applicants submit that neither of these statements are true with respect to the claims of Groups I-V, which are all classified within the same class and subclass and which all recite the same compositions and do not recite the "structurally distinct products" or "methods of use comprising distinct method steps."

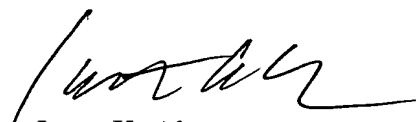
Applicants further submit that cystic fibrosis also should be within Group I as it is a respiratory disease. Accordingly, Applicants respectfully request reconsideration and withdrawal of this restriction in addition to the previous restrictions.

Finally, the Manual of Patent Examining Procedure states that: "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims or distinct inventions." (MPEP § 803; emphasis added). In the present case, even if the claims may be properly restricted as drawn to distinct inventions, the restriction is improper as the claims can be examined currently without "serious burden." Accordingly, it is requested that the outstanding restriction requirement be withdrawn.

The Office Action further requires an election of species. First, the Examiner requires election among different types of respiratory disease. Applicants elect asthma as a species. Second, the Examiner requires election among "inflammatory mediators." In response to this requirement, Applicants elect leukocytes as a species. These elections of species are made without traverse to the extent it is understood that, upon the finding of an allowable species, examination will continue with the non-elected species until all species have been examined or a non-allowable species is identified. Claims 1-4, 8-16, 20-27, 31-34, 37-42 and 48-51 read on the elected species.

It is respectfully submitted that this application is in condition for substantive examination, which action is respectfully requested.

Respectfully submitted,



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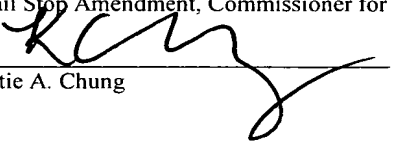
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